

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23/08/2002

CORAM

THE HONOURABLE MR.JUSTICE P.SHANMUGAM
AND
THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

CRIMINAL APPEAL NO.43 of 1995

1. Senthil Kumar
 2. Murugan @ Murugesan
 3. Rajani @ Saravanan
 4. Murthy .. Appellants/Accused
- 1 to 4

-Vs-

State by Inspector of Police,
Thillainagar Police Station
Tiruchirappalli 17,
(Crime No.180/92) .. Respondent/Complainant

This Criminal Appeal is preferred under S.374(2) of Code of Criminal Procedure against the conviction and sentence passed by the learned I Additional Sessions Judge, Trichy, in S.C.No.76/93 dated 18.11.1994 .

For Appellants : Mr.M.Nataraj Vallatharasu

For Respondent : Mr.V.M.R.Rajendran
Additional Public Prosecutor

:JUDGMENT

M.CHOCKALINGAM, J.

The appellants 1 to 4 herein have brought forth this appeal against the judgment of conviction and sentence passed by the learned Additional Sessions Judge, Tiruchirappalli in S.C.No.76 of 1993.

2. The appellants were tried by the lower court for the charges framed against them under S.323 of I.P.C. (A-2), under S.323 read with S.34 of I.P.C. (A-1, A-3 and A-4), under S.302 of I.P.C. (A-3) and under S.302 read with S.34 of I.P.C. (A-1, A-2 and A-4). They were found guilty under the above penal provisions. A-1 to A-4 were sentenced to undergo life imprisonment for the offence under S.302 of I.P.C. A-1 to A-4 were sentenced to undergo R.I. for six months and to pay a fine of Rs.100/-, in default of which to undergo R.I. for one month. The sentences were to run concurrently.

3. Short facts which lead to the framing of the above charges can be stated as follows:

P.W.1 Thangaraju was residing with his family members in a small house situate on the bank of Uyyakondan River, Chinnasamy Nagar, Trichy. The deceased Pandian was the son of P.W.1. P.Ws.2 to 6 were all residing in the neighbourhood. On 5.5.1992 at about 4.00 P.M., there was a fire accident at Anna Nagar, "C" Block, Chinnasamy Nagar. In order to protect the household articles, P.W.1 and his deceased son Pandian removed the same from their house and were moving towards the residence of Baskar at 5.15 P.M. to keep them safe. At that time, the appellants 1 to 4 who came from east-west, questioned Pandian, whether they were stealing the household utensils. Pandian replied that those articles belonged to him. Witnessing the same, P.W.2 Raja asked the appellants/accused that why should they come from the next street and do the mischief. On hearing this, A-2 attacked P.W.2 on his head with a bamboo stick. When P.W.1 pushed the second appellant/A-2, A-1 attacked P.W.1. Immediately, the deceased Pandian interfered to prevent A-1 from attacking his father. Suddenly A-4 caught hold of the deceased Pandian on the back side. The third appellant/A-3 took a knife from his waist and gave a severe blow on the left chest of the deceased. The deceased Pandian on receipt of the said stab injury, fell down. All the appellants left the place of occurrence and proceeded towards Jailpettai. The entire occurrence was witnessed by P.Ws.3 to 6. P.W.1 and P.W.6 Shanmugam took the deceased Pandian in an auto rickshaw to the General Hospital, Trichy, where P.W.9 Dr. Ganeshkumar declared him dead. At about 16.30 hours P.W.8 Dr. Mohan treated P.W.2 Raja for the injury sustained by him at the time of occurrence and found the following injuries.

1. Contusion right side forehead 2 x 1 cm.

2. Contusion right side nose 2 x 1 cm.

Ex.P4 is the copy of the Accident Register issued by P.W.8 Doctor. He has opined that those injuries were simple in nature.

4. On receipt of the death information from the Hospital at 18.50 hours, P.W.12 Jayabalan, the Head Constable, Thillainagar Police Station, proceeded to the hospital and recorded the statement of P.W.1, which is marked as Ex.P1. At 20.00 hours, he registered a case in Crime No.180/92 under S.302 of Indian Penal Code. Ex.P11 Express First Information Report was despatched to the Magistrate's Court. On receipt of the First Information Report by 9.00 P.M., P.W.13 Kalimuthu, Inspector of Police, took up the investigation and proceeded to the place of occurrence. On inspection, he prepared Ex.P2 Observation Mahazar in the presence of two witnesses viz. P.W.7 Pandian and Subramaniam and Ex.P12 Rough Sketch. The Investigation Officer recovered from the place of occurrence M.O.2 bloodstained earth and M.O.3 sample earth under Ex.P3 Mahazar. He conducted the inquest on the dead body of Pandian in the presence of the witnesses and recorded the statements of the witnesses. He prepared Ex.P14 inquest report. The dead body of Pandian was despatched with a requisition for postmortem through a constable.

5. On receipt of the said requisition, P.W.10 Dr. Dhanraju commenced the autopsy at 1.00 P.M. on the dead body of Pandian and conducted the same. The Doctor found the following external injuries.

1. An oval shaped wound 4cm x 2cm x 15cm on the left side chest 7 cm below left nipple in the fifth intercostal space; on introducing the probe, goes upwards and inwards and the edge is regular and dark clotted blood peeping out.

P.W.10 Doctor issued Ex.P6 postmortem certificate and has opined that the deceased would appear to have died of shock and haemorrhage due to the injury caused to the vital organ viz. heart.

6. M.O.4 full arm shirt, M.O.5 Lunghi and M.O.6 waist thread worn by the deceased were recovered by the constable and produced before the Investigation Officer. All the material objects were despatched to the Court of Judicial Magistrate with a requisition to send them for chemical analysis, and accordingly, they were sent. The reports received from the Forensic Science Laboratory are marked as Exs.P9 and P10. On 12.5.1992 A-3 surrendered before the Judicial Magistrate No.I, Karur. A-1 and A-4 were arrested at 5.30 A.M. on 18.5.1992 at Trichy Jubitar Timber Shop, and they were remanded to judicial custody. On 28.5.1992, A-2 surrendered before the Judicial Magistrate, Keeranur. On completion of the investigation, the Investigation Officer laid a charge sheet against the appellants/accused.

7. In order to prove the charges levelled against the accused, the prosecution marched P.Ws.1 to 13, marked Exs.P1 to P14 and produced M.Os.1 to 6. When the appellants-accused were questioned under S.313 of Code of Criminal Procedure, they answered that the versions of the prosecution witnesses were false. No defence witness was examined. After hearing both sides, the Court of Sessions found them guilty on the charges levelled against them and awarded the sentence, as stated above.

8. Arguing for the appellants, the learned Counsel would submit that the lower court without appreciation of evidence has found the appellants guilty; that no motive was attributed to the appellants to commit such an heinous crime of murder; that according to the prosecution, P.Ws.1 to 6 were eyewitnesses, and in particular, P.W.2 was attacked by A-2 and sustained simple injury; that out of the six witnesses, P.Ws.2 to 4 were treated hostile by the prosecution, and thus, their evidence was of no help to the prosecution case; that P.W.6 has categorically spoken that he came to the place of occurrence only after the incident; that the name of P.W.5 is not mentioned in the F.I.R. as one of the eyewitnesses; that according to Ex.P1 complaint, it was A-4, who caught hold of the deceased Pandian and facilitated the crime, but P.W.5 examined as one of the eyewitnesses has stated that it was A-1, who held the deceased, and thus, the inconsistent version would cast a doubt whether P.Ws.1 and 5 could have either been present in the place of occurrence or seen the occurrence; that though the prosecution has examined P.W.2 as one of the eyewitnesses, who was injured at the time of occurrence, has turned hostile and has not spoken anything in favour of the prosecution case; and that the prosecution has not placed any material to indicate that the appellants had any common intention to kill the deceased Pandian or share such intention. Added further the learned Counsel that so far as A-2 is concerned, he cannot be found guilty only on the basis of medical evidence, while the concerned injured examined as P.W.2 has not spoken anything in that regard; that there was nothing unusual in the people living in the neighbourhood, rushing to the scene to help the victims and extinguish fire, and hence, it would be farfetched to suggest that the appellants have gone to the scene to pick up a quarrel with P.W.1 or the deceased; that the lower court should have accepted the defence plea that the occurrence was a sudden one, and hence, if the available evidence was sufficient that it was A-3, who caused any injury, he should be made liable under S.304 (ii) of I.P.C. and not under S.302 of I.P. C.; that it remains to be stated that the appellants did not confront

the deceased first nor did they voluntarily and wantonly pick up a quarrel with him; that even as per the prosecution case, it was the deceased, who intervened during the quarrel between the appellants and P.W.1's father and that he was assaulted only after a skirmish; that this single circumstance was sufficient to show that the attack on the deceased by A-3 was not a pre-planned or pre-meditated one and A-3 acted only in the heat of the moment; that the prosecution witnesses did not speak of any prior enmity between the deceased and A-3, and thus, the assault was only a sudden and unexpected one; that the lower court has reached its decision of guilty of the accused on extraneous consideration, and hence, the judgment of the trial court has to be set aside, and the appeal be allowed.

9. The learned Additional Public Prosecutor in his sincere attempt to sustain the judgment of conviction and sentence made by the lower court would submit that it is true that the appellants, who did not belong to the place of occurrence had made a visit that time, when a fire broke out; that P.W.1 and his son Pandian were removing their household utensils to keep them for safe custody; that at that time, it was the accused, who asked them whether they were stealing the articles; that when P.W.2 questioned about the conduct of the accused, it was A-2, who attacked him with a bamboo stick; that when they were about to attack the father of the deceased, the deceased interfered; that at that juncture, A-4 caught hold of the deceased and A-3 gave a severe blow on his left chest, which resulted in his death shortly; that the case was registered immediately on the statement given by P.W.1; that a reading of the First Information Report would clearly indicate the truth, and thus, the case has been registered without any delay whatsoever; that a reading of the F.I.R. would also reflect the truth of the prosecution case; that P.Ws.2 to 4 have turned hostile, but that has not affected the veracity of the prosecution case, since P. Ws.1 and 6 have given consistent evidence; that the non-recovery of the knife used by the accused at the time of occurrence would not in any way affect the case of the prosecution; that the conduct of the accused as spelt out by the witnesses, would clearly indicate the common intention shared by all the appellants to commit the grave offence of murder; that the lower court only on careful consideration of the evidence available, has found the appellants/accused guilty of the respective charges and awarded the punishment, and hence, the judgment of the lower court has got to be sustained.

10. The appellants herein, who were ranked as A-1 to A-4 in a Sessions trial have assailed the judgment of the lower court, finding them guilty under all the charges levelled against them and awarding the sentence, as stated supra.

11. In order to prove the charges, the prosecution though marched P.Ws.1 to 6, as eyewitnesses, P.Ws.2 to 4 have turned hostile. P.W.6 has categorically admitted that he came to the place of occurrence after hearing about the incident. Nowhere has he stated that he witnessed the occurrence or saw any one of the assailants. Though P.W.5 has deposed as if he witnessed the occurrence, his evidence does not require any consideration for the reason that his name did not find place in Ex.P1 complaint. He has deposed that at the time of occurrence, he was in front of his shop, and thus, he was able to see the occurrence. But, in Ex.P2 Observation Mahazar and Ex.P12 Rough Sketch, the shop of P.W.5 is not shown. Apart from that, he was also enquired by the Investigation Officer three days after the occurrence, and hence, his

evidence cannot be relied on by the prosecution. P.W.1 has categorically deposed that when fire broke out in his area on the date of occurrence, in order to safeguard the household utensils, himself and his son, the deceased Pandian removed them from their house and were proceeding to the house of one Baskar, and while so, the accused intervened and questioned them whether they were stealing the articles, and the same was suitably replied by the deceased Pandian; that P.W.2 questioned the appellants-accused why should they commit mischief; that hearing the same, A-2 attacked P.W.2 with a bamboo stick on his head; that looking at this P.W.1 pushed A-2; that at that juncture, when P.W.1 was about to be attacked, his son, the deceased Pandian intervened to the rescue of his father, and at that time A-4 caught hold of the hands of the deceased Pandian, and A-3 took a knife from his waist and gave a severe blow on the left side of the chest; that the deceased fell down; that the accused fled away from the scene of occurrence; that the injured Pandian was taken to Hospital; and that the deceased succumbed to injuries and was declared dead by P.W.9 Doctor. It is pertinent to note that the evidence of P.W.1 remains unshaken, despite cross examination made in full. Not even a suggestion was put to P.W.1 stating that the accused were absent at the place of occurrence. The narration of events by P.W.1 is cogent. There is nothing to suspect or discredit his evidence. It is true that P.Ws.2 to 4 have turned hostile and the evidence of P.Ws.5 and 6 could not be relied on by the prosecution for the reasons stated supra, and thus, the evidence of P.W.1 remains uncorroborated by the other eyewitnesses. But, the court is of the view that the evidence of P.W.1 stands careful scrutiny and remains believable and acceptable. Thus, there may not be any difficulty in accepting his evidence.

12. While the occurrence has taken place at 5.15 P.M., the injured was taken to the hospital immediately and was examined by P.W.9 Doctor, attached to the General Hospital by 5.30 P.M. On receipt of the death intimation from the hospital, P.W.12, Head Constable, proceeded to the General Hospital and recorded the statement of P.W.1 at 18.50 hours, which is marked as Ex.P1. On the strength of the said statement, a case under S.302 of I.P.C. was registered at 20.00 hours, and the printed First Information Report was despatched to the court immediately and reached the court that night itself. P.W.13, Inspector of Police, who undertook the investigation, proceeded to the spot, made an inspection, prepared Ex.P2 Observation Mahazar and Ex.P12 Rough Sketch, conducted the inquest on the dead body of Pandian in the presence of witnesses, as found under Ex.P14 inquest report, and then sent the dead body for conducting postmortem with a requisition through a constable. On receipt of the requisition, P.W.10 Doctor has commenced the autopsy at that time and conducted the same and has given a report as found under Ex.P6. The Doctor has found only one injury on the left side chest and the corresponding internal injury and has opined that the said injury could have been caused by a double edged knife. From the evidence of P.W.10 and Ex.P6 postmortem certificate, it would be clear that the deceased died of shock and haemorrhage due to the injury caused to the heart. Thus, the medical evidence stands in full corroboration of the ocular evidence, adduced by the prosecution.

13. Even in the First Information Report, the earliest document, P.W.1 has categorically stated that it was A-4, who caught hold of his son, the deceased Pandian, and A-3 gave a severe blow with a knife on the left chest of the deceased. As narrated above, he has given an unshaken evidence. The contention of the appellants' side that the knife used by A-3 has not been

recovered, cannot be given any importance, since the non-recovery of the weapon used at the time of occurrence would not be fatal to the prosecution case. The murderous assault given by A-3 and A-4's act of facilitating the said crime were neither pre-planned nor pre-meditated, and hence, it cannot be stated that A-3 and A-4 acted with intention to cause the death. It is pertinent to note that the appellants, who did not belong to the place of occurrence, have come to the scene of occurrence and have voluntarily and wantonly picked up quarrel with P.W.1 and his son, the deceased Pandian, and hence, there is nothing to infer that there was any provocation for the appellants to commit the offence. The facts and circumstances would clearly indicate that A-3 acted with intention of causing such a fatal injury, which he knew to be likely to cause the death of Pandian. A-4 has facilitated the crime by catching hold of the deceased, and hence, it has to be found that A-3 has committed the murder of Pandian, and A-4 has abetted in the commission of the said crime. Therefore, the murderous act of A-3 warrants a punishment under S.302 of I.P.C., while the abetment committed by A-4 for the said crime is liable to be punished under S.302 read with S.109 of I.P.C. A-3 and A-4 deserve acquittal of the other charges.

14. As could be well seen from the available materials, there is nothing to indicate that the appellants have acted in furtherance or shared the common intention to kill the deceased. So far as A-2 is concerned, though the prosecution has adduced medical evidence and marked Ex.P4 Accident Register in that regard, P.W.2 has turned hostile and has not spoken anything about the occurrence. Hence, he cannot be found guilty under the charges framed against him. So far as A-1 is concerned, it is not the case of the prosecution that A-1 committed any overt act or uttered any words at the time of occurrence, and thus, the prosecution has not proved the nexus between A-1 and the crime in question. Therefore, A-1 and A-2 deserve acquittal of all the charges framed against them.

15. In the result, this criminal appeal is allowed in part, modifying the judgment of the court below as follows. A-3 is found guilty under S.302 of I.P.C. A-4 is found guilty under S.302 read with S.109 of I.P.C. Both A-3 and A-4 are sentenced to life imprisonment. A-3 and A-4 are acquitted in respect of the other charges. A-1 and A-2 are acquitted of the respective charges. The bail bonds, executed by A-1 and A-2, if any, shall stand cancelled. If A-3 and A-4 are on bail, the learned Additional Sessions Judge shall take steps to commit them to prison to undergo the remaining period of sentence.

Index: Yes (P.S.M.J.) (M.C.J.)

Internet: Yes 23-8-2002

To:

1. The I Additional Sessions Judge, Tiruchirapalli.
2. The I Additional Sessions Judge, Tiruchirapalli,
Through The Principal Sessions Judge, Tiruchirapalli.
3. The District Collector, Tiruchirapalli.
4. The Director General of Police, Chennai 4.
5. The Superintendent, Central Jail, Tiruchirapalli.
6. The Public Prosecutor, Madras.
7. The Judicial Magistrate No.V, Tiruchirapalli.
8. The Judicial Magistrate No.V, Tiruchirapalli,

through The Chief Judicial Magistrate, Tiruchirapalli.
9. The Inspector of Police, Thillainagar Police Station,
Tiruchirapalli.

nsv/-

Judgment in
C.A.No.43 of 1995
Dt: 23-8-2002

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